

104TH CONGRESS
1ST SESSION

S. 867

To amend the Internal Revenue Code of 1986 to revise the estate and gift tax in order to preserve American family enterprises, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26 (legislative day, MAY 15), 1995

Mr. COCHRAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to revise the estate and gift tax in order to preserve American family enterprises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Family En-
5 terprise Preservation Act of 1995”.

6 **SEC. 2. INCREASE IN UNIFIED ESTATE AND GIFT TAX CRED-**
7 **ITS FOR FAMILY ENTERPRISES.**

8 (a) ESTATE TAX.—Section 2010 of the Internal Rev-
9 enue Code of 1986 (relating to unified credit against es-

1 tate tax) is amended by redesignating subsections (b) and
 2 (c) as subsections (c) and (d), respectively, and by insert-
 3 ing after subsection (a) the following new subsection:

4 “(b) ADDITIONAL CREDIT FOR FAMILY ENTER-
 5 PRISES.—The amount of the credit allowable under sub-
 6 section (a) shall be increased by an amount equal to the
 7 value of any family enterprise property included in the de-
 8 cedent’s gross estate under section 2040A(a), to the extent
 9 such value does not exceed \$121,800.”.

10 (b) GIFT TAX.—Section 2505 of the Internal Reve-
 11 nue Code of 1986 (relating to unified credit against gift
 12 tax) is amended by redesignating subsections (b) and (c)
 13 as subsections (c) and (d), respectively, and by inserting
 14 after subsection (a) the following new subsection:

15 “(b) ADDITIONAL CREDIT FOR FAMILY ENTER-
 16 PRISES.—The amount of the credit allowable under sub-
 17 section (a) for each calendar year shall be increased by
 18 an amount equal to—

19 “(1) the value of gifts of family enterprise prop-
 20 erty (as defined in section 2040A(b)(1)), to the ex-
 21 tent such value does not exceed \$121,800, reduced
 22 by

23 “(2) the sum of the amounts allowable as a
 24 credit to the individual under this subsection for all
 25 preceding calendar periods.”.

1 (c) EFFECTIVE DATES.—

2 (1) ESTATE TAX CREDIT.—The amendments
3 made by subsection (a) shall apply to the estates of
4 decedents dying after December 31, 1995.

5 (2) GIFT TAX CREDIT.—The amendments made
6 by subsection (b) shall apply to gifts made after De-
7 cember 31, 1995.

8 **SEC. 3. INCREASE IN ANNUAL GIFT TAX EXCLUSION.**

9 (a) IN GENERAL.—Section 2503 of the Internal Rev-
10 enue Code of 1986 (relating to taxable gifts) is amended
11 by redesignating subsection (c) as subsection (d), and by
12 inserting after subsection (b) the following new subsection:

13 “(c) ADDITIONAL EXCLUSIONS FROM GIFTS.—The
14 amount of the exclusion allowable under subsection (b)
15 during a calendar year shall be increased by an amount
16 equal to the value of gifts of family enterprise property
17 (as defined in section 2040A(b)(1)) made during such
18 year, to the extent such value does not exceed \$10,000.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to gifts made after December 31,
21 1995.

22 **SEC. 4. FAMILY ENTERPRISE PROPERTY.**

23 (a) IN GENERAL.—Part III of subchapter A of chap-
24 ter 11 of the Internal Revenue Code of 1986 (relating to

1 gross estate) is amended by inserting after section 2040
2 the following new section:

3 **“SEC. 2040A. FAMILY ENTERPRISE PROPERTY.**

4 “(a) GENERAL RULE.—The value included in the de-
5 cedent’s gross estate with respect to family enterprise
6 property by reason of this section shall be—

7 “(1) the value of such property, reduced by

8 “(2) the lesser of—

9 “(A) 50 percent of the value of such prop-
10 erty, or

11 “(B) \$1,000,000.

12 “(b) FAMILY ENTERPRISE PROPERTY.—

13 “(1) IN GENERAL.—For purposes of this sec-
14 tion, the term “family enterprise property” means
15 any interest in real or personal property which is de-
16 voted to use as a farm or used for farming purposes
17 (within the meaning of paragraphs (4) and (5) of
18 section 2032A(e)) or is used in any other trade or
19 business, if at least 80 percent of the ownership in-
20 terest in such farm or other trade or business is
21 held—

22 “(A) by 5 or fewer individuals, or

23 “(B) by individuals who are members of
24 the same family (within the meaning of section
25 2032A(e)(2)).

1 “(2) LIMITED PARTNERSHIP INTERESTS EX-
 2 CLUDED.—An interest in a limited partnership
 3 (other than a limited partnership composed solely of
 4 individuals described in paragraph (1)(B)) shall in
 5 no event be treated as family enterprise property.

6 “(c) TAX TREATMENT OF DISPOSITIONS AND FAIL-
 7 URE TO USE FOR QUALIFYING USE.—

8 “(1) IMPOSITION OF ADDITIONAL ESTATE
 9 TAX.—With respect to family enterprise property in-
 10 herited from the decedent, if within 10 years after
 11 the decedent’s death and before the death of any in-
 12 dividual described in subsection (b)(1)—

13 “(A) such individual disposes of any inter-
 14 est in such property (other than by a disposi-
 15 tion to a member of the individual’s family), or

16 “(B) such individual or a member of the
 17 individual’s family ceases to participate in the
 18 active management of such property,

19 then there is hereby imposed an additional estate
 20 tax.

21 “(2) AMOUNT OF ADDITIONAL TAX.—The
 22 amount of the additional tax imposed by paragraph
 23 (1) with respect to any interest in family enterprise
 24 property shall be the amount equal to the excess of
 25 the estate tax liability attributable to such interest

1 (determined without regard to subsection (a)) over
 2 the estate tax liability, reduced by 5 percent for each
 3 year following the date of the decedent's death in
 4 which the individual described in subsection (b)(1)
 5 or a member of the individual's family participated
 6 in the active management of such family enterprise
 7 property.

8 “(3) ACTIVE MANAGEMENT.—For purposes of
 9 this subsection, the term “active management”
 10 means the making of the management decisions of
 11 a business other than the daily operating decisions.

12 “(d) ADDITIONAL RULES.—For purposes of this sec-
 13 tion, rules similar to the rules under paragraphs (3), (4),
 14 and (5) of section 2032A(c), paragraphs (7), (8), (9),
 15 (10), (11), and (12) of section 2032(e), and subsections
 16 (f), (g), (h), and (i) of section 2032A shall apply.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
 18 for part III of subchapter A of chapter 11 of the Internal
 19 Revenue Code of 1986 is amended by inserting after the
 20 item relating to section 2040 the following new item:

“Sec. 2040A. Family enterprise property.”.

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to the estates of decedents dying
 23 after December 31, 1995.

1 **SEC. 5. VALUATION OF CERTAIN FARM, ETC., REAL PROP-**
2 **ERTY.**

3 (a) IN GENERAL.—Section 2032A(a)(2) of the Inter-
4 nal Revenue Code of 1986 (relating to limitation on aggre-
5 gate reduction in fair market value) is amended by strik-
6 ing “\$750,000” and inserting “\$1,000,000”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to the estates of decedents dying
9 after December 31, 1995.

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